UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,280	12/30/2003	Frank Kilian	6570P011	9178

45062 7590 12/23/2008

SAP/BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
TAHA, SHAQ	

ART UNIT	PAPER NUMBER
2446	

MAIL DATE	DELIVERY MODE
12/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,280	KILIAN, FRANK	
	Examiner	Art Unit	
	SHAQ TAHA	2446	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 November 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 - 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is a Non-final action for application number 10/750,280 based on after request for continued examination filed on 11/06/2008. The original application was filed on 12/30/2003. Claims 1 – 30 are currently pending and have been considered below. Claims 1, 7,15, 21, and 25 are independent claims.

Response to Arguments

Applicant's arguments with respect to claims 1 – 30 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 - 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. (US 2004/0146056), and further in view of Harris et al. (US 7114170)

Regarding claim 1, 25, a method comprising: establishing communication between a plurality of non-Java-based server nodes of a first instance and a plurality of Java-based server nodes of a second instance via an intermediate server, **[a digital**

packet-switching telecommunications network including a plurality of switches (including exchanges, routers, servers and the like) connected to one another by one or more telecommunications links/trunks in which at least one switch automatically maintains a routing table listing the speed or latency of links, (Martin et al., Paragraph 18)],

generating a packet, on one of the non-java based server nodes, to be transmitted from one of the non-Java-based server nodes to one of the Java-based server nodes, **[each switch automatically generates and sends occasional timing packets to each neighboring switch (and, optionally, to other indirectly-connected switches), as shown in Fig. 6, wherein the sending router assemble a packet in Ref # 20, (Martin et al., Paragraph 51)],**

specifying in a header of the packet an address of a destination Java-based server node and information that indicates that the packet is generated by one of the non-Java-based server nodes, **[If it is to be forwarded to another switch, a new header (containing the new address along with the packet ID and a timer flag) can be applied and the packet placed in the queue for transmission, as shown in Fig. 6 Ref # 20, (Martin et al., Paragraph 25)],**

forwarding the packet to the intermediate server from the one of the non-Java-based server nodes, **[an intermediate switch that receives and forwards a timer packet can use its event recorder to record not only the time of receipt and the packet ID, but also the identity of the originator, the identity of the ultimate destination, (Martin et al., Paragraph 28)],**

and forwarding the packet to the destination Java-based server node from the intermediate server based on the address provided in the header of the packet by synchronizing the packet header such that it can be decoded by a destination server, **[decoding means associated with said receiver means adapted to decode the time-data in each of said incoming packets and to feed the decoded time-data for each respective incoming packet to said updating means, wherein the intermediate switch receives the generated packet and decodes the header of the packet to find the destination address, (Martin et al., Paragraph 69, page 8)],**

maintaining a list of services performed by the Java-based server nodes, **[each switch maintains a routing table that records the latency of the routes accessible by that switch, wherein each switch maintains service which is the routing table, (Martin et al., Abstract)],**

and maintaining a list of services performed by the non-Java-based server nodes, **[each switch maintains a routing table that records the latency of the routes accessible by that switch, wherein each switch maintains service which is the routing table, (Martin et al., Abstract)],**

Martin fails to explicitly teach java-based servers,

Rowe et al. teaches a communication between non java-based node and java-based servers wherein the server utilizes a java-based processing platform, **(Harris et al., Paragraph 65)**, in order to provide an interactive experience that can anticipate the user's needs based upon a user's preferences and make suggestions that would assist him/her in their on-line experience, **(Harris et al., Col. 2, lines 63 – 67),**

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin by communicating non java-based node and java-based servers wherein edge server 312 is in communication with java-based player 314 that compiles the final signal and forwards the signal to a transmitter 316 as shown in Fig. 3A, **(Rowe et al., Col. 13, lines 40-42)**, in order to provide an interactive experience that can anticipate the user's needs based upon a user's preferences and make suggestions that would assist him/her in their on-line experience, **(Harris et al., Col. 2, lines 63 – 67).**

Regarding claim 2, 26, the method further comprising: generating a second packet to be transmitted from one of the Java-based server nodes to one of the non-Java-based server nodes, **[each switch automatically generates and sends occasional timing packets to each neighboring switch (and, optionally, to other indirectly-connected switches), as shown in Fig. 6, wherein the sending router assemble a packet in Ref # 20, (Martin et al., Paragraph 51)],**

specifying in a header of the second packet an address of a destination non-Java-based server node and information that indicates that the packet is generated by one of the Java-based server nodes, **[If it is to be forwarded to another switch, a new header (containing the new address along with the packet ID and a timer flag) can be applied and the packet placed in the queue for transmission, as shown in Fig. 6 Ref # 20, (Martin et al., Paragraph 25)],**

forwarding the second packet to the intermediate server from the one of the Java-based server nodes, **[an intermediate switch that receives and forwards a timer packet can use its event recorder to record not only the time of receipt and the packet ID, but also the identity of the originator, the identity of the ultimate destination, (Martin et al., Paragraph 28)],**

and forwarding the second packet to the destination non-Java-based server node from the intermediate server based on the address provided in the header of the second packet, **[decoding means associated with said receiver means adapted to decode the time-data in each of said incoming packets and to feed the decoded time-data for each respective incoming packet to said updating means, wherein the intermediate switch receives the generated packet and decodes the header of the packet to find the destination address, (Martin et al., Paragraph 69, page 8)].**

Regarding claim 3, 27, the method of claim 2, further comprising: sending notification of a status of each of the listed services to the non-Java-based server nodes in the first instance, **[allows the intermediate to send query packets to the other identified switches to request information about the time that the timer packet was sent and received, (Martin et al., Paragraph 28)].**

Regarding claim 4, 28, the method further comprising: sending notification of a status of each of the listed services to the Java-based server nodes in the second

instance, **[allows the intermediate to send query packets to the other identified switches to request information about the time that the timer packet was sent and received, (Martin et al., Paragraph 28)].**

Regarding claim 5, 29, the method of claim 4, wherein the maintaining a list of services is accomplished by the intermediate server and the sending notification of a status of each of the listed services is accomplished by the intermediate server, **[allows the intermediate to send query packets to the other identified switches to request information about the time that the timer packet was sent and received, (Martin et al., Paragraph 28)].**

Regarding claim 6, 14, and 30, Martin et al. teaches a digital packet-switching telecommunications network including a plurality of switches (including exchanges, routers, servers and the like) connected to one another by one or more telecommunications links/trunks in which at least one switch automatically maintains a routing table listing the speed or latency of links, **(Martin et al., Paragraph 18),**

Martin et al. fails to teach implementing Java 2 Platform Enterprise Edition (J2EE) applications in the Java-based server nodes,

Harris et al. teaches that the system may utilize open-source platforms or protocols such as Java/Java 2 Enterprise Edition (J2EE), **(Harris et al., Col. 4, lines 5 – 10),**

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin by including that the system may utilize open-source platforms or protocols such as Java/Java 2 Enterprise Edition (J2EE), **(Harris et al., Col. 4, lines 5 – 10),** in order to provide an interactive experience that can anticipate the user's needs based upon a user's preferences and make suggestions that would assist him/her in their on-line experience, **(Harris et al., Col. 2, lines 63 – 67).**

Regarding claim 7, a system comprising: a first instance including a plurality of non-Java-based server nodes, each of the non-Java- based server nodes executing software instructions to attach a header to a body of a packet, the header including information to specify that the packet originated from one of the non-Java- based server nodes, **[a digital packet-switching telecommunications network including a plurality of switches (including exchanges, routers, servers and the like) connected to one another by one or more telecommunications links/trunks in which at least one switch automatically maintains a routing table listing the speed or latency of links, (Martin et al., Paragraph 18)],**

a second instance including a plurality of Java-based server nodes, **[a digital packet-switching telecommunications network including a plurality of switches (including exchanges, routers, servers and the like) connected to one another by one or more telecommunications links/trunks in which at least one switch**

automatically maintains a routing table listing the speed or latency of links, (Martin et al., Paragraph 18)],

each of the Java-based server nodes executing software instructions to attach a header to a body of a packet, the header including information to specify that the packet originated from one of the Java-based server nodes, **[If it is to be forwarded to another switch, a new header (containing the new address along with the packet ID and a timer flag) can be applied and the packet placed in the queue for transmission, as shown in Fig. 6 Ref # 20, (Martin et al., Paragraph 25)],**

and a message server coupled between the first and second instances to establish communication there between the first instance and the second instance by synchronizing each packet header such that it can be decoded by a destination server, **[decoding means associated with said receiver means adapted to decode the time-data in each of said incoming packets and to feed the decoded time-data for each respective incoming packet to said updating means, wherein the intermediate switch receives the generated packet and decodes the header of the packet to find the destination address, (Martin et al., Paragraph 69, page 8)].**

.

Regarding claim 8, the system of claim 7, wherein each of the instances further comprises a dispatcher to distribute client requests to the server nodes of the respective instance, **[Timing packet 16 is created in a process diagrammatically indicated at 20 and queued for transmission in queue 22, (Martin et al., Paragraph 57)].**

Regarding claim 9, the system of claim 7, wherein the message server is to route message packets between the non-Java-based server nodes of the first instance and the Java-based server nodes of the second instance, **[determining the latency of a route between two switches in a packet-switched telecommunications network, comprising the steps of: transmitting an identified packet from a first switch to a second switch in the network via a predetermined route, (Martin et al., Paragraph 69, claim 1)].**

Regarding claim 10, the system of claim 7, wherein the message server is to assign a service identification associated with each type of services executed on the server nodes, **[It is preferable for the timer flag or the packet type identification to be made at or near the network-protocol level, (Martin et al., Paragraph 24)].**

Regarding claim 11, the system of claim 10, wherein the message server includes a service repository to maintain a list of the assigned service identification and corresponding service names, **[When packet 16 is being transmitted its timer flag is detected and the packet ID is immediately input to event recorder 18, which records the UTS time with the ID as a packet transmission event in its event table 24, (Martin et al., Paragraph 57)].**

Regarding claim 12, The system of claim 7, wherein the message server further comprises: a first repository to maintain a list of services currently being executed on the non-Java-based instances, **[When packet 16 is being transmitted its timer flag is detected and the packet ID is immediately input to event recorder 18, which records the UTS time with the ID as a packet transmission event in its event table 24, (Martin et al., Paragraph 57)],**

and a second repository to maintain a list of services currently being executed on the Java- based instances, **[the header of the packet is read and recognized as a timer packet and the time of receipt and the packet ID are recorded in the event table 36 of the event recorder 38 associated with router R4, (Martin et al., Paragraph 59)].**

Regarding claim 13, the method of claim 4, wherein the maintaining a list of services is accomplished by the intermediate server and the sending notification of a status of each of the listed services is accomplished by the intermediate server, **[allows the intermediate to send query packets to the other identified switches to request information about the time that the timer packet was sent and received, (Martin et al., Paragraph 28)].**

Regarding claim 15 and 21, a message server comprising: a first communication interface to establish communication with a plurality of non-Java-based server nodes, **[a digital packet-switching telecommunications network including a plurality of**

switches (including exchanges, routers, servers and the like) connected to one another by one or more telecommunications links/trunks in which at least one switch automatically maintains a routing table listing the speed or latency of links, (Martin et al., Paragraph 18)],

a second communication interface to establish communication with a plurality of Java-based server nodes, **[a digital packet-switching telecommunications network including a plurality of switches (including exchanges, routers, servers and the like) connected to one another by one or more telecommunications links/trunks in which at least one switch automatically maintains a routing table listing the speed or latency of links, (Martin et al., Paragraph 18)],**

and a controller to transfer packets between the non-Java-based server nodes and the Java-based server nodes, the controller to ensure the packets are received by a destination server node, **[decoding means associated with said receiver means adapted to decode the time-data in each of said incoming packets and to feed the decoded time-data for each respective incoming packet to said updating means, wherein the intermediate switch receives the generated packet and decodes the header of the packet to find the destination address, (Martin et al., Paragraph 69, page 8)].**

Regarding claim 16, 22, the message server wherein the controller is to assign a service identification associated with each type of services executed on the server

nodes, **[It is preferable for the timer flag or the packet type identification to be made at or near the network-protocol level, (Martin et al., Paragraph 24)].**

Regarding claim 17, Matena teaches that the message server further comprises: a service repository maintains a list of the assigned service identification and corresponding service names, **[When packet 16 is being transmitted its timer flag is detected and the packet ID is immediately input to event recorder 18, which records the UTS time with the ID as a packet transmission event in its event table 24, (Martin et al., Paragraph 57)],**

Regarding claim 18, Matena teaches that the message server further comprises: a first repository to maintain a list of services currently being executed on the non-Java-based server nodes, **[When packet 16 is being transmitted its timer flag is detected and the packet ID is immediately input to event recorder 18, which records the UTS time with the ID as a packet transmission event in its event table 24, (Martin et al., Paragraph 57)],**

and a second repository to maintain a list of services currently being executed on the Java-based server nodes, **[the header of the packet is read and recognized as a timer packet and the time of receipt and the packet ID are recorded in the event table 36 of the event recorder 38 associated with router R4, (Martin et al., Paragraph 59)].**

Regarding claim 19, 20, 24, the method of claim 4, wherein the maintaining a list of services is accomplished by the intermediate server and the sending notification of a status of each of the listed services is accomplished by the intermediate server, **[allows the intermediate to send query packets to the other identified switches to request information about the time that the timer packet was sent and received, (Martin et al., Paragraph 28)].**

Regarding claim 23, the method further comprising: maintaining a list of services performed by the Java-based server nodes, **[each switch maintains a routing table that records the latency of the routes accessible by that switch, wherein each switch maintains service which is the routing table, (Martin et al., Abstract)],**

and sending notification of a status of each of the listed services to the Java-based server nodes in the second instance, **[each switch maintains a routing table that records the latency of the routes accessible by that switch, wherein each switch maintains service which is the routing table, (Martin et al., Abstract).**

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Shaq Taha** whose telephone number is 571-270-1921. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeff Pwu** can be reached on 571-272-6798.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/S. T./

Examiner, Art Unit 2146

/Jeffrey Pwu/

Supervisory Patent Examiner, Art Unit 2446